

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: SORIN 3T HEATER- COOLER SYSTEM PRODUCTS LIABILITY LITIGATION (NO. II)	:	MDL NO. 2816
	:	CIVIL ACTION NO. 1:18-MD-2816
	:	
<hr style="width: 50%; margin-left: 0;"/>	:	(Judge Conner)
	:	
THIS DOCUMENT RELATES TO:	:	
<u>Olivares v. Sorin Group USA Inc.,</u>	:	
No. 1:20-CV-2055	:	

ORDER

AND NOW, this 28th day of August, 2023, upon consideration of amended case management order number 15 (“CMO15”), entered on July 20, 2021, (see Doc. 470), which establishes a number of docket control measures to govern this multidistrict litigation and, *inter alia*, (1) requires “all Litigating Plaintiffs to produce certain specified information regarding their claim(s)” and establishes a deadline for production, (see id. ¶ C); (2) provides that a litigating plaintiff, in order to proceed, “must have positive bacterial culture results showing infection with a non-tuberculosis mycobacteria (“NTM”) following surgery with a Sorin 3T Heater-Cooler Device,” (see id. ¶ B(9)); and (3) establishes a series of procedures, including show-cause and sanctions protocols, in the event of noncompliance, (see id. ¶ C(12)); and further upon consideration of the court’s show-cause order (Doc. 522) issued March 15, 2023, with respect to litigating plaintiff Richard Olivares, upon notice (Doc. 521) from defendant pursuant to CMO15 that Olivares had not complied with the order’s production requirements, as well as Olivares’ response (Doc. 525) to the show-cause order, and defendant’s reply (Doc. 526) thereto, and the court, having reviewed Olivares’ response to the show-cause order, finding Olivares has failed to

comply with CMO15 in several respects, in that Olivares has not provided proof of a positive bacterial culture for NTM as required by paragraph B(9) of CMO15, but instead expresses an intent to conduct discovery to “obtain essential evidence to support his claims . . . including laboratory records, depositions[,] and expert opinions,” advises he has prepared subpoenas for depositions of his treating physicians, and indicates he is “in the process of finding an expert to review” the records regarding any NTM diagnosis, (see Doc. 525 ¶¶ 16-18), notwithstanding CMO15’s express prohibition against case-specific discovery absent compliance with its threshold production requirements, (see Doc. 470 ¶¶ E(14)-E(15)), and the court therefore agreeing with defendant that Olivares has failed to comply with CMO15 and has failed to cure that deficiency when tasked by the court to do so, and thus concluding it is appropriate to invoke CMO15’s protocols for noncompliance, namely, dispositive motion practice to allow the court to determine whether the case shall, in whole or in part, be dismissed with or without prejudice, be subject to a suggestion to the Judicial Panel on Multidistrict Litigation that it be remanded to the transferor court, or be set for trial, (see id. ¶ C(12)), it is hereby ORDERED that:

1. Defendant may file a motion in accordance with paragraph C(12) of CMO15 no later than **September 15, 2023**.
2. The motion shall be briefed in accordance with the Local Rules of Court for the Middle District of Pennsylvania. See M.D. PA. L.R. 7.5, 7.6, 7.7, 56.1.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner
United States District Judge
Middle District of Pennsylvania